

PRESERVING LANCASTER COUNTY'S RURAL CHARACTER

LAND USE TOOLS FOR LANCASTER COUNTY

INTRODUCTION

The purpose of this paper is to identify different land use approaches to ensuring that future development complements the County's traditional character and provides flexibility balanced with the overall goal of preserving a rural setting. An initial evaluation is provided by the Consultant team on the appropriateness of these tools for the County. However, the ultimate decision on land use policies and regulations will be made by Lancaster County.

Lancaster County is fortunate to have over X [insert number] acres of undeveloped land that is used for farming, forestry, or simply left in its natural state. To many community residents, this rural landscape is *the* defining feature of Lancaster County and its most important asset. The preservation of this rural character was the top priority that arose out of the community workshops marking the beginning of this project.



Of the 43,000 acres of land in Lancaster County considered to be prime for agricultural activity, 17,000 acres were still in active farming use in 1990. Farming is an important component of the County's economic history and farmlands provide the "aesthetically pleasing landscape" referred to by many citizens, contribute to the local economy and can also assist with recharging groundwater aquifers. According to the US Census, employment related to farming, fishing and forestry declined over 65% between 1990 and 2000 (from 253 jobs to 85 jobs). The change in employment does not necessarily imply a direct correlation in the reduction of land in agricultural use, but does indicate trends in agriculture-related activity.

Coinciding with the decline in agricultural employment is increased development pressure as people move in, attracted by the County's rural character and easy lifestyle. This has the potential to change the natural landscape. Gradually, undeveloped fields and forests are being developed as housing, stores and offices, and other buildings. This is not to say that development itself is negative. New businesses bring much needed jobs to the County, and the shops and offices bring more choices and alternatives to residents. Additionally, the ability to make economic use of the land is very important to



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many in the community who may be “land rich” but “cash poor.” In other words, development can bring many benefits and challenges.



Image: Lancaster County Aerial Photo
Source: Google Earth: Created 1/17/2007.

This paper presents an analysis of different land use tools in use in similar communities around Virginia and around the Country, with some more appropriate for Lancaster County, than others. Unfortunately, there is no one “silver bullet” approach that can do it all. In this sense, the final solution may be a combination of different tools that provide the best balance.

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WHAT IS “RURAL CHARACTER?”

The Comprehensive Plan describes this rural character as “...a tree-covered, rolling landscape; beautiful, clean shorelines, and a quiet, small-town atmosphere.”

During the Comprehensive Plan workshop kickoff events, the desire to maintain and hence the County’s rural character was one of the main goals identified by the participants. The consultant team asked attendees to describe what they meant by the subjective term, ‘rural character.’ Many terms were used to describe the County’s rural character, including those related to the County’s physical appearance and also activities that are an important aspect of rural character.

Physical Appearance

- Farmland
- Natural unspoiled vistas and viewscapes
- Connections to land and water
- Small town feel
- Rural roads
- Open space

Activities

- Farming
- Timbering
- Hunting
- Crabbing
- Oystering
- Fishing

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VIRGINIA LAND USE STATUTES ADDRESSING RURAL CHARACTER

The *Code of Virginia* has many statutes devoted specifically to land preservation. The following are some of the key sections that may have particular application in Lancaster County.

| Statute | Title | Description |
|---------------------------|---------------------------------------|---|
| § 3.1-22.28 | Right to Farm | Establishes the right to engage in farming and forestry activity. Protects farmers and loggers from nuisance suits. |
| Title 10.1 | Conservation | This entire title provides the legislation authorizing many forms of rural land conservation programs and agencies. |
| §10.1-1009 to §10.1-1016 | Virginia Conservation Easement Act | This act authorizes the use of conservation easements. It also authorizes the levying of taxes that reflect the restricted usability of the land under the terms of the easement. |
| § 10.1-1017 to §10.1-1026 | Virginia Land Conservation Foundation | Establishes the Foundation and authorizes it to receive donations of money and land. The Foundation can enter into conservation easement agreements with private landowners as well as purchase land outright. |
| §10.1-1700 to §10.1-1705 | Open Space Land Act | Authorizes public bodies (for example, Lancaster County) to purchase, receive as dedication, or otherwise obtain land for use as open space. This acquisition does not have to be permanent and can last as little as five years. The public body can authorize farming or timbering on the land. |
| §10.1-1800 to §10.1-1804 | Virginia Outdoors Foundation | The Foundation promotes the preservation of open-space lands and encourages private gifts of money, securities, land or other property to preserve the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth |
| §10.1-2100 to §10.1-2116 | Chesapeake Bay Preservation Act | Restricts and governs certain land use and development activities in the lands that drain into the Chesapeake Bay. Imposes limits on the amount of land that can be cleared, amounts of impervious cover, and other activities that can affect the receiving watershed. |
| §15.2-2316.2 | TDR Enabling Legislation | Authorizes local governments to initiate a Transfer Of Development Rights program. |
| §15.2-2286.1 | Clustering | Authorizes local governments to preserve open space through the use of conservation development standards. |

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WHAT ARE THE IMPLICATIONS OF MAINTAINING THE STATUS QUO?

Lancaster County was recently cited as “One of the Best Places to Live” in *Progressive Farmer* magazine. If the County wishes to maintain the amenities that led to this award, current land use practices may require modification. Presently, Lancaster County has a fairly modest set of tools designed to promote and preserve rural character. It is doubtful that continued reliance on these tools alone will achieve the goal of rural character preservation over the long term.

The County has two Agricultural Zoning Districts (A-1 and A-2). Lands within these districts comprise approximately **x%** of the total county land area. As currently, written, the minimum lot size in these districts is **2 acres in the A-1 district** and **33,000 square feet in the A-2 district**. This means that a 100 acre farm in the A-2 district could conceivably be turned into a development with almost 120 homes (it does not equal to 100 acres divided by 33,000 square feet because roads, drainage, landscaping, and other features prevent the construction of homes on the entire site).

The County also has the Highway Corridor Overlay District (HCOD) which is primarily designed to limit the number of driveways entering onto certain County roads and provide for some visual buffering of developments from the roadway. In general, the HCOD is a good approach for visually obscuring developments that are in already forested areas, because existing plant material can do a good job of screening the new buildings. However, on open farmland and other cleared areas, the screening may be inadequate or even seem out of character if the remaining portions of the property are all cleared lands.

Fortunately, some of the recent development activity in Lancaster County has focused on areas near existing towns, leaving many of the farmlands intact. However, it is likely that this development momentum could start impacting rural areas as farmers retire and capitalize on the equity in the land. Furthermore, from a development economics standpoint, the attractiveness of farmland due to the flat topography and lower site clearing and preparation costs will only increase development pressure on these areas.

RECOMMENDATIONS FOR LANCASTER COUNTY

Site Planning and Design

Successful developments that truly enhance a community and preserve rural character require a significant amount of planning and design. The County’s land use regulations and design guidelines should reflect an area’s specific qualities, patterns, and visual characteristics. Some primary design principles are discussed below.

- The open space should have a specific purpose - not an unused static vacant lot - with the homes sited accordingly.
- The County should develop a master open space or greenways plan to maximize the value of the open spaces in the individual tracts, which should be considered

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- as part of an overall system with connectivity to other open space or conservation areas.
- The required amount of open space needs to be adequate for the intended purpose - agricultural, community gathering spaces, recreational, preservation of natural resources, etc.
 - Locating the dwelling units into groups of four to eight homes, each surrounded by 100 to 300 feet of vegetated buffers, has also been recommended to create a development pattern consistent with traditional rural farmsteads.
 - The effect of small lots and high densities on rural character and the provision of services must also be considered. For example, a 100-acre project with 70 percent open space and homes on quarter-acre lots would have a gross density of 1 dwelling unit/0.8 acres, or 120 homes. Although a significant amount of open space is preserved in this scenario, the impact of 120 households on adjacent farming activities, water quality, and traffic volumes must be evaluated.
 - Ordinances should ensure that development reflects the County's traditional development patterns and goals for preserving rural character. For example, the wide streets with curbs and gutters typically required for conventional subdivisions should be discouraged by both the conservation ordinance and county standards.
 - There are many options for ownership for the open space - the original landowner can retain ownership and use of the land *according to design guidelines established by the County*, homeowner's association could manage it, it can be held as individual outlots for each of the building lots, or a local government or a land trust can manage the property.

Implementation and Incentives

The most common incentives to encourage a desired pattern of development include expedited approval processes and density bonuses. One approach to encourage compatible developments is to make the review and approval process for projects quicker for projects that promote the County's goals of protecting rural character and preserving open space. However, it may be considered arbitrary if the County makes the approval process significantly more difficult for conventional development without adequate justification.

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ZONING AND SUBDIVISION TOOLS

The following tools utilize the County's land use authority- primarily through the powers of zoning and subdivision. All have potential benefits, as well as limitations. This section will provide a brief description of the tool, give some examples that are currently in place, and provide an assessment of the relative applicability for Lancaster County.

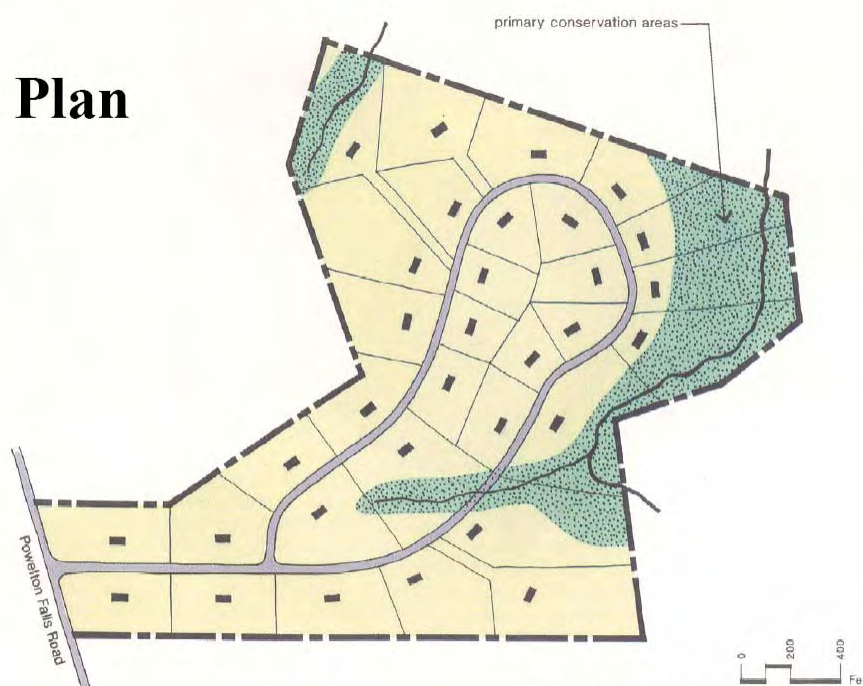
CONSERVATION DEVELOPMENT/DESIGN

Description

The terms 'cluster development' 'conservation subdivision or design' and 'open space design' are often used interchangeably to refer to a form of land development in which new homes are grouped together with the remaining land preserved as open space. The primary purpose of conservation development is to protect farmland and/or natural resources while allowing the same number of residences under existing zoning and conventional subdivision regulations. Some communities allow a greater density (see density bonus) in their local ordinances to encourage this approach to open space planning.

TRADITIONAL DEVELOPMENT/SUBDIVISION

Yield Plan



Randall G. Arendt – Conservation Design for Subdivisions. 1996

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The grouping of homes on one part of a tract is the primary difference between conservation development and conventional subdivisions in which new homes are evenly distributed throughout a parcel without consideration to environmental or cultural features.

Conservation development is usually applied to parcels that are at least 40 acres and larger. The requirements for the amount of open space vary among communities depending on land use objectives and site-specific characteristics. Most communities require at least 50 percent, with 70 to 80 percent being the most common. A minimum of 90 percent open space has been used in some communities where the goal is to preserve large tracts of agricultural or ranch lands.

Appropriateness for Lancaster County

If carefully planned and designed, conservation development offers the potential to help the County manage growth and preserve rural character and open space. However, there are certain challenges and issues associated with conservation development which need to be considered during the planning and design phases.

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Advantages

- Preserves open space at the same density standard as is outlined in current ordinances.
- Reduces the amount of infrastructure needed to serve the new development, including reduction of the additional linear miles of road and the associated costs of construction, operations and maintenance. More savings are possible through shared wells and septic systems in conservation developments.
- Contributes to preserving rural character and resources, by locating homes away from floodplains, steep slopes, geologic hazards, wetlands, wildlife habitat, aquifer recharge areas, and soils unsuitable for septic systems.
- Does not involve complex and costly administration and record-keeping by local officials nor requires public funding
- Does not depend upon the cooperation of multiple landowners or landowner charity.
- May appeal to potential homeowners who want easy access to open space for the views and/or for a range of outdoor activities (golf course, passive or active recreational space)

Challenges and Issues

- For developers, conservation development can be less profitable than conventional subdivisions depending on the demand for small lots in the area and the jurisdiction's permitting procedures.
- Conservation development cannot be the only tool used by the County to preserve open space and manage growth and needs to be implemented in the context of a comprehensive set of policies and regulations.
- If the open spaces are not planned and implemented as part of a broader network of open space, greenways and conservation areas, the County risks creating a chopped up landscape.
- Conservation subdivisions need to be attached to existing services to avoid inefficiencies and poor land use practices.
- Many conservation subdivisions are highly amenitized and expensive and won't help the County address workforce and affordable housing because the parcels are smaller than in conventional subdivisions.
- Septic systems can also be installed as a community system at a lower cost than individual lots in conservation subdivisions. However, either option can concentrate effluent over a smaller portion of the property than with traditional large lots, a particularly important issue for the County which gets all its drinking water from groundwater resources. The impact of concentrated effluent also needs to be considered when density bonuses are used as an incentive for conservation development or for affordable housing.

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DENSITY BONUS

Description

A density bonus is an incentive-based tool that permits developers to increase the maximum allowable development on a property in exchange for helping the community achieve public policy goals. Increasing development density may allow for increases in dwelling square footage or increases in the number of developed units. This tool works best in areas where growth pressures are strong and land availability limited or when incentives for attaining the goals outweigh alternative development options.

In many ordinances, density bonus provisions are provided on a linear basis, where every percentage of open space dedicated is rewarded with a given density credit.

Another type of density bonus is a sliding scale based on the amount of open space provided, with the allowed density increasing as the percentage of open space increases. For example, a development with 70 percent open space could have 20 units on two-acre lots, whereas 80 percent open space might allow 30 units on 1.3-acre lots. The developer benefits from the additional units, but the impact on rural resources is mitigated (to a certain extent) by the increase in open space. This provided increased incentive to dedicated larger amounts of open space.

Where Used

James City County, Virginia

The James City County zoning ordinance provides density bonuses of between 2.5% and 10% depending on the amount of open space being preserved.

Albemarle County, Virginia

Albemarle County provides up to a 10% density bonus for the provision of open space in excess of 20%.

Appropriateness for Lancaster County

Density bonuses, in concert with expedited approvals could provide excellent incentives for individuals to elect the conservation development option. An added benefit is that density bonuses can encourage affordable housing. However, the standards need to be clearly written to ease interpretation and prevent confusion, which would add unnecessary delay to a project.

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DEVELOPMENT APPROVAL PROCESS/EXPEDITED PERMITTING

Description

By Right

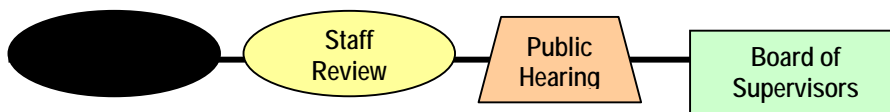
Most development that occurs is “by-right.” This means that the project meets all zoning requirements and is allowed to proceed with only administrative approval. In the case of Lancaster County, the Zoning Administrator is charged with approving all by-right applications and in many cases, all that may be required is a permit indicating compliance with the Zoning Ordinance.



Special Exception

Some uses and developments require “special exception” from the Board of County Supervisors. This is typically because the nature of the use or development is such that more intense scrutiny and discourse is required. For example, *special exception* approval is required to open an equestrian academy in the A-1 zoning district. In this case, the Zoning Administrator would review the application and pass it to the Planning Commission. At that time, the Administrator would also advertise that a public hearing is scheduled for the Planning Commission. At the hearing, the community would be provided with an opportunity to comment on the proposed application. Following the hearing, the Planning Commission will make a recommendation to the Board of Supervisors. Another advertisement period is required to provide notice of the public hearing before the Board of Supervisors. Once again, the public would be provided with an opportunity to comment on the proposed development. At this time, the Board may (or may not) approve the application. Depending on the jurisdiction, it is not unheard of for *special exception* applications to last a year or more. This added time creates additional cost for the builder as they are forced to pay interest on loans for the entire time.

Special Exception



Planned Unit Development

The process for approving a *Planned Unit Development (PUD)* is similar in some ways to the *special exception* process. Generally, the same hearings are held and the application might

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take the same amount of time, although both can be approved much more quickly if there is no opposition. A significant difference is that the *PUD* regulations can be tailored to provide significant flexibility to the applicant.

For example, the PUD regulations may speak very clearly to the overall density of the project and portions of the development where it abuts neighboring properties. However, it may provide broad latitude for housing types, lot sizes, or other elements that are on the interior of the project. Generally, a special exception is limited in the range of flexibility that is allowed, and the exception process is usually used to impose additional requirements to a project.

Where Used

Louisa County, Virginia

In December 2005, Louisa County amended its zoning ordinance to include Planned Unit Development (PUD) Districts. The County's zoning ordinance states that the PUD districts "are intended to provide for variety and flexibility in design necessary to implement the varied goals of the county as set forth in the comprehensive plan."

Appropriateness for Lancaster County

If the intent is to encourage a certain type of development, then anything that can be done to expedite the approval process is important. Conversely, a burdensome approval process will discourage a given type of development. For example, if clustered development and open space retention is an important goal, then facilitating the approval process by allowing conservation development *by right* would encourage this type of development. Obviously, standards must be developed to ensure that any by right development meets County expectations.

*Make it easy for
people to do
what you want
them to do*

Tailoring the development approval process to achieve desired goals can be a relatively simple and low cost task. Certain standards may have to be modified and clarified to ensure that adequate protection is provided and that the rules themselves are easy to interpret.

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EXCLUSIVE USE ZONING/AGRICULTURAL CONSERVATION ZONING DISTRICTS

Description

Some communities establish agricultural conservation zoning districts that are very restrictive in the range of uses that they allow. In many agricultural conservation zoning districts, only farming or forestry (and other similar uses that have minimal development impact) are allowed. Other types of development, such as residential subdivisions or commercial development would not be allowed. This means that a rezoning to a residential or commercial zoning district would be required for anything but farming or forestry.

Permitted Uses in an Agricultural Conservation District:

- Farming
- Forestry
- One household per farm
- Hunting/Fishing

A modification to this could be that conservation residential development is allowed by right, provided a certain amount of open space is preserved. A conventional residential subdivision with larger individual lots would still require a rezoning (or perhaps a special exception), but a conservation development would be approved administratively.

Where Used

Isle of Wight County, Virginia

Isle of Wight County allows only a very limited range of uses in its *Rural/Agricultural/Conservation District*. Any residential development must be in a designated *Development Service District* which basically limits this type of development to the areas around the city of Smithfield and a few smaller communities spread throughout the county that provide water and/or sewer. The ordinance does allow a farmer to give property to a family member (*family member transfer*) where one home may be built, but is very restrictive overall.

Usefulness in Lancaster County

While this may achieve the goal of preserving open space, it would be politically challenging to essentially



Isle of Wight County Future Land Use
Source: Isle of Wight Comprehensive Plan

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downzone large portions of the County. Downzoning refers to the process of modifying the zoning to restrict what a landowner can do with their land. Generally, landowner agreement is crucial to this type of modification to a zoning district, and may be difficult to achieve across large swaths of the County.

FAMILY MEMBER SUBDIVISION/TRANSFER

Description

Family Member Subdivision or Family Member Transfers provide relief for owners of large tracts of land so that they can give a piece of property to their relatives. Often described as “their property,” this type of subdivision can allow limited development for rural landowners while imposing more stringent restrictions on typical development activities.

Appropriateness for Lancaster County

Section 15.2-2244 A. of the Code of Virginia actually requires that almost all counties provide “...reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family...”

Lancaster County already has these provisions in its subdivision ordinance, although they could be clarified and refined to prevent abuse.

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TRANSFER OF DEVELOPMENT RIGHTS (TDR)

Description

Transfer of Development Rights transfers development to undeveloped areas to other areas where development and infrastructure may already exist or that is targeted for growth by the community. The goal of a TDR is to direct growth to an already developed, or developing, area. New growth directed to urban areas can make development less costly and it can preserve land at no direct cost to taxpayers. TDRs direct development to underutilized space in urban or suburban areas. Protected lands remain in private hands and on municipal tax roles. To be effective, lands are identified as eligible for a development rights transfer and ineligible for conversion to new uses. Landowners of these properties (senders) sell development rights to developers in urban areas (receiver). A local government holds the rights transferred and the developer in the receiving area obtains a density bonus. This density bonus allows a higher density than the current zoning permits and higher densities can mean an increase in developer profits.

Section 15.2-2316.2 of the Virginia Code grants local governments the authority to develop a TDR program.

“Pursuant to the provisions of this article, the governing body of any locality by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction.”



A TDR program operates under the assumption that:

- There are areas where more intense development is appropriate *and* that there is both development demand and public support for more intense development in these identified areas. These are the *receiving areas*.

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- Concurrently, the areas to be protected are usually subject to some development pressure as well (although this is not necessarily a requirement for a TDR program). These are the *sending areas*.

Where Used

Montgomery County, Maryland

One of the oldest and most successful TDR programs in the country is in Montgomery County, Maryland. This program has preserved over 56,000 acres in the county's northern tier. Density has been transferred from the agricultural reserve areas to reserve areas located in the southern portions of the County, near existing population centers with excellent public transportation and infrastructure.

Blacksburg, Virginia

In 2006, the legislature amended the Code of Virginia to explicitly allow TDR in the state. Prior to that time, communities cobbled together TDR ordinances using awkward provisions from multiple sources. Blacksburg, Virginia has had a TDR program since 1996, and had saved 26 acres as of the fall of 2001.

Appropriateness for Lancaster County

TDR programs can be either mandatory or voluntary, but most are voluntary. TDRs allow the preservation of farmland or environmentally sensitive lands while simultaneously providing landowners compensation. They can be tailored to meet community land use goals, help implement local comprehensive plans and zoning ordinances, and they can provide permanent land protection. TDRs also allow efficient use of urban land. However, there may be a lack of willing buyers at the time there is a willing seller, there may not be a demand for higher density development in receiving areas, and TDRs are often complex to administer.

If there is little or no public support for increased development intensity in a receiving area, then a TDR program would likely prove politically infeasible because the increased development intensity in an identified receiving area is either politically unpopular or economically unrealistic. Similarly, a TDR program that identifies receiving areas where there is little developer demand for increased development intensity would simply not be used.

One of the areas in unincorporated Lancaster County where there are any significant development pressures lie is along the waterfront, which is not well served by utility infrastructure or roadways. There is also strong opposition amongst some County residents against increases in development intensity over current levels in these areas.

From a growth-management perspective, preferred locations for receiving areas center in and around the existing incorporated areas, including the area bounded generally within the triangle between the towns of White Stone, Irvington and Kilmarnock and in and around the County's traditional villages. Thus far, new residential developments in these areas have

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not required any substantial density increases over the levels allowed in the current zoning districts. However, this may change over time with increasing interest in development in this primary growth area.

For many reasons, such as the complexity and cost of development and administration, a TDR ordinance is not recommended for Lancaster County at the time of this report. In the future, the County may wish to reconsider after it has augmented its planning department with additional staff and technology required to successfully operate a TDR program, and as desired development and level of density around the towns and villages would begin to exceed beyond the limits of the current zoning.

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PURCHASE OF DEVELOPMENT RIGHTS

In the Fall of 2001, the Virginia General Assembly appointed a Farmland Preservation Task Force through the Department of Agriculture and Consumer Services to address growing concerns over the loss of agricultural land in the Commonwealth. The Task force developed a report, *A Model Purchase of Development Rights (PDR) Program for Virginia*, after numerous meetings with representatives of jurisdictions with PDR programs within Virginia and in other states. According to the report, Virginia lost over 23,000 acres of agricultural land to development each year between 1992 and 1997, of which more than 10,000 acres (annually) was prime farmland. The report defines a PDR program as the following.

“Under a PDR program, a landowner voluntarily sells his or her rights to develop a parcel of land to a public agency or a charitable organization charged with the preservation of farmland. The landowner retains all other ownership rights attached to the land, and a conservation easement is placed on the land and recorded on the title. The buyer (often a local unit of government) essentially purchased the right to develop the land and retires that right permanently, thereby assuring that development will not occur on that particular property. In placing such an easement on their farmland, participating landowners often take the proceeds from sale of the development rights to invest in their farming operations or retire from the business, allowing another farmer to purchase the land at lower rates.”

Virginia Code provides even broader possibilities for purchasing development rights. Part of the Virginia Land Conservation Fund’s purpose is to acquire property for the protection or reservation of ecological, historical or cultural resources. The criteria include provision for grants to localities for PDR programs. (§10.1-1020 Virginia Land Conservation Fund. Purposes of Foundation. Code of Virginia. Title 10.1 CONSERVATION. Chapter 10.2 Virginia Land Conservation Foundation. §10.1-1020 Virginia Land Conservation Fund. Purposes of Foundation).

Where Used

The 2004 report developed by the Farmland Preservation Task Force identified six Virginia communities with PRD programs – Albemarle, Clarke, Fauquier, James City, and Loudoun Counties and the City of Virginia Beach.

The Fauquier County program establishes a number of criteria that must be satisfied in order for the County to consider the purchase of development rights on a particular property:

1. Property is an economically viable farming operation.
 - a. Gross farm income exceeds \$25,000
 - b. At least one family member’s principal occupation involves farming this parcel/ forestland

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- c. Farm has invested in substantial infrastructure improvements such as barns, bins, specialty structures, fencing, drainage ditches, waterway improvements, etc.
2. Parcel is greater than 50 acres, or comprises a combined area of contiguous parcels greater than 50 acres.
3. Parcel is not presently zoned any category other than Rural Agricultural (RA) or Rural Conservation (RC).
4. The parcel is not under conservation easement or pending consideration for conservation easement or otherwise restricted from development.

Appropriateness for Lancaster County

While a PDR program does present opportunities for another tool for farmland protection, a main concern is the County's ability to administer the program given its current limited staff resources, especially over extended periods of time (10 – 20 years). Provided the County can fund a PDR program in an amount sufficient to make significant land preservation possible, a PDR program could be successfully used in Lancaster County to preserve large amounts of farmland and open space. Under a typical PDR program, the land can continue being farmed or harvested, thus maintaining the 'rural character' of the County. By compensating the property owner for the right to develop his or her land, the County mitigates any economic hardship that may befall someone who is "land rich but cash poor." However, the challenge is to develop a funding mechanism for the program.

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a. Conservation Easements/Land Trusts

Description

A conservation or open space easement is a legal contract made between a landowner and a public body or qualified conservation organization. Generally the conservation organization buys the development rights for the property. The easement limits present and future property development rights. It allows you to live on the property and use it for its traditional use, e.g., as a farm, forest, open space, and/or natural area, but protects it as well. The easement is legally recorded and bound to the deed of the property permanently.

Each easement is tailored to the specific characteristics and uses of the given property. Timber harvesting, farming, primary residences and other uses may continue while the land's unique characteristics - prime soils, endangered species habitat, wetlands, etc. - are protected. The easement protects the property's natural or open space values, assuring the land's availability for agriculture, forestry, recreation, open-space use, thus protecting natural resources, maintaining or enhancing air or water quality, or preserving historical, architectural or archaeological aspects of the property.

Easements rarely allow public use of the property. The "holder" of the easement, i.e., the land conservation organization with whom the landowner entered into the easement, is responsible for enforcing the protective covenants of the easement and is therefore allowed to conduct periodic inspections of the property. The landowner retains all rights to the property except for restrictions on future development rights specified in the easement.

Natural Area Dedications are a conservation option available to landowners of highly significant natural areas. The landowner retains ownership and transfer rights of the land while voluntarily restricting land uses that are incompatible with the conservation needs of the natural area.

To be eligible for this program, a property must include one or more of these natural values: habitat for rare, threatened for endangered plant or animal species; rare or state significant natural communities; and rare or state significant geologic sites.

There may be financial incentives for dedicating land. Examples include possible reduced assessment for real estate purposes, reduction of federal estate and Virginia inheritance taxes, and a charitable deduction for state and federal income tax purposes.

In a similar vein, **Virginia's Registry of Natural Areas** program encourages voluntary conservation of significant lands in private and public ownership. To be eligible for placement on the registry, a property must support significant natural heritage resources for Virginia, such as: habitat for rare, threatened for endangered plant or animal species; rare or state significant natural communities; and rare or state significant geologic sites. The

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decision to register is entirely the landowner's. There is a voluntary, non-binding agreement that may be terminated by either party at any time.

For more information see: www.dcr.virginia.gov/dnh/registry.htm.

Land Trusts in Virginia

Virginia land trusts include The Virginia Chapter of the Nature Conservancy (TNC), the Chesapeake Bay Foundation, the Northern Neck Land Conservancy, and the Lower James River Association.

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SLIDING SCALE ZONING

Description

Sliding scale zoning limits the number of times that a parent parcel (a parcel existing on the date of ordinance adoption) can be split, based on its size, i.e., the larger the parcel the more splits that may occur, up to a maximum number established (as shown on the example chart). A larger minimum parcel size is also established.

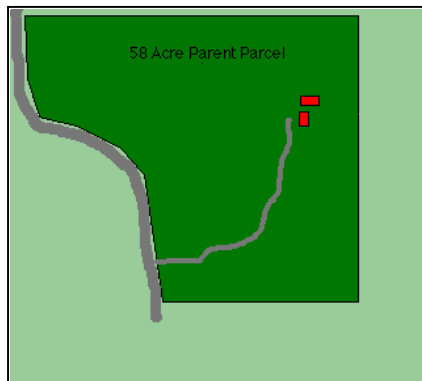
| Sliding Scale (Example) | |
|----------------------------|-----------------------------------|
| Area of Lot of Record | Maximum Additional Lots Permitted |
| 1 to 10 acres | 1 |
| 10.1 to 20 acres | 2 |
| 20.1 to 40 acres | 3 |
| 40.1 to 80 acres | 4 |
| 80.1 to 160 acres | 5 |
| 160.1 to 320 acres | 6 |
| over 320.1 acres | 7 |

Unlike exclusive use zoning, sliding scale zoning allows some non-farm residential development without special land use or other reviews. Sliding scale zoning can be useful in agricultural areas where there are significant development pressures and land speculation. Sliding scale zoning is most effective in areas where a wide range of parcel sizes exist and non-farm residential development has already begun to occur. Minimum and maximum building lot sizes can be used to encourage the location of non-farm development on less productive farmland and/or in areas where development is more concentrated to direct growth onto already fragmented land.

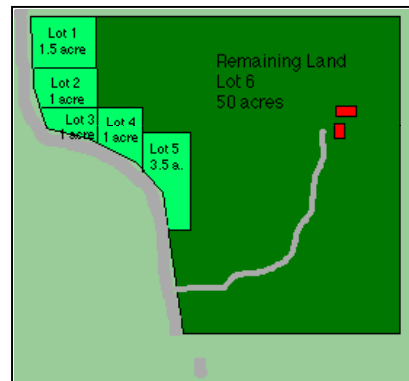
Since this method does permit some use of land for non-agricultural uses, it allows communities to more effectively avoid a claim that land has been "taken" without compensation.

Where Used

Sliding scale zoning is used in Montgomery County, Virginia and Highland County Virginia. In those counties, the zoning and subdivision ordinances have been modified to limit the amount of parcels that can be subdivided from a parent parcel based on calculations developed to determine appropriate buildout in the rural portions of the County.



"Parent Tract"



"Parent" and Resulting Tracts

Source: Montgomery County, VA Department of Planning and GIS Services

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Appropriateness for Lancaster County

In the future, sliding scale zoning may be a useful tool for Lancaster County because of its high flexibility and ability to preserve open space and protect sensitive areas.

However, it is not recommended at this time due to the complex requirements of developing the program and the challenges of tracking and implementing the program over time. Extensive mapping of resources may be necessary before implementing sliding-scale zoning to precisely identify sensitive resource areas and correctly establish property boundaries and property databases. Tracking compliance with sliding-scale zoning is complicated by the number of sliding-scale density zones (usually twenty to thirty permissible density categories) and sliding-scale zoning requires extensive staff time and expertise.

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LARGE MINIMUM LOT SIZE

Description

Large lot zoning initially seems a natural approach to growth-related problems. Requiring every house to have three to five acres of land may initially maintain the appearance of a rural character in a community. Large lots mean fewer houses, which means fewer residents. Homes on large lots are likely to be expensive, so they contribute more in taxes than smaller units. By allowing houses to get by with a well and on-site septic treatment, large lots often avoid significant infrastructure costs.

Lot sizes are generally greater than 10 acres, depending on the objective (farmland preservation vs. rural character). Lot sizes of three to five acres are generally not considered large lot zoning. Lot sizes of 40 to 160 acres may often required in areas where farmland preservation is particularly important. Many communities have found that although large lot zoning does reduce the number of homes that can be built, it also spreads out homes over a large area and removes the land from agricultural use. House lots become "too large to mow, but too small to plow." This technique has high risk of creating low density urban sprawl spread across the landscape and has not been very successful at protecting natural resources unless the lots are quite large.



Large Lot Sprawl
Source: "Open Space Zoning" Randall Arendt

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Where Used

In Virginia, Rappahannock County has a 25-acre zone, and Essex, Albemarle and several other counties have 20-acre zones. Louisa County recently added the Rural Estate (RE) District to its zoning ordinance, which specifies a minimum lot area of six acres for non-farm uses, “unless there is at least a 50 percent land dedication for permanent significant open space, in which case the minimum lot area shall be three (3) acres.” Some states, such as Maryland, have areas with 50-acre zones, and California’s Napa Valley has zones of one house per 100 acres or more.

Appropriateness for Lancaster County

Significant increases in minimum lot size are not recommended for Lancaster County. In order to be beneficial, the minimum lot sizes would have to be increased 10- or 20- fold or more over current minimum lot sizes in the Agricultural zoning districts. This is unlikely to happen as it can impose a hardship on owners of large farms. In addition, this would dramatically increase the costs of home purchase, which is directly counter to the County’s desired goal of increased affordable housing.

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BUFFERING

Description

In rural areas, buffers are most commonly used for two primary reasons – to minimize the visual impact of the conservation development – and to reduce the potential conflicts between residences and adjacent uses (ie, farmers spreading manure, operating loud machinery, etc.) 75 feet of native vegetation is a fairly typical requirement. The native vegetation helps to avoid the appearance of a suburban, homogenous development and helps to achieve the goal of retaining a community’s rural character.



Buffers can make an area appear relatively undeveloped by screening buildings from the roadway. One of the most famous, and effective, examples of roadway buffers is in North Carolina’s Research Triangle Park. Seen from the roadway, the Park seems like a densely wooded forest. However, as the photo to the right shows, large tracts of the Park are occupied by very intense development.



Where Used

Buffering provisions are widely used throughout the Commonwealth. Lancaster County has some basic buffering provisions in the Highway Corridor Overlay District which establish buffers from roadways and from properties that border a development. Louisa County, VA requires a vegetative buffer for its Transitional Residential (TR) District “in order to effectively screen the subdivision from primary and secondary roadways and associated

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rights-of-way. The purpose for this screening is to preserve the rural character of the county from the perspective of vehicles along these roadways.”

Appropriateness for Lancaster County

Buffers can maintain a rural setting, however they do relatively little to actually preserve a rural, agrarian lifestyle or protect the environment. The area behind a thick buffer may be 100% cleared and this would be unknown to the casual passer by.

In order for a buffer to be effective at maintaining an undeveloped appearance, it has to be thick enough (have enough opacity) to effectively screen the buildings. Depending on the maturity, type and spacing of the vegetation, fairly deep buffers may be required. This may impose a hardship on landowners and business owners who may be forfeiting large portions of their land to buffer area or are struggling to attract customers because their businesses are hard to see.

In many parts of the County, lands have been cleared for farming and there is little existing vegetation that would serve to screen new buildings. In these cases, berms must be erected and new plantings installed. Until these plantings achieve maturity (which may take up to 10 years), much of the new buildings may be visible.

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RIGHT-TO-FARM ORDINANCE

Description

A *right-to-farm* ordinance is not directly related to land use and may be considered more of a statement of intent and an educational piece regarding a locality's prioritization of the rural farmer.



Such measures generally have little regulatory effect, but seek to reduce the opposition of urban neighbors to commercial agriculture as a nuisance generator. Many ordinances require that homebuyers who move to parcels adjacent to or near working farms be notified about the possible negative impacts of agricultural activities. In this way, the theory goes, new residents- especially those unfamiliar with rural living- would effectively learn about the realities of modern farming and would be less inclined to complain, or even go to court, about sprays, dust, odors, noise and other aspects of agricultural activities. The normal practices of farmers would thus be protected.

Right-to-farm ordinances can supplement the statutory protections that are provided by Section 3.1-22.28 of the Virginia Code that guarantee the right to farm and provide additional protection from nuisance lawsuits by individuals seeking to interrupt the operation of a farm or logging operation.

Appropriateness for Lancaster County

A *right to farm* ordinance would allow the County to emphasize and very publicly declare its commitment to preserving its farmland intent and its farming heritage. It may create some additional work for the County as it goes about the process of notifying landowners moving into properties near farms, but the costs or effort are not great. Another approach may be to develop flyers or notices that are distributed to all real estate agents practicing in the County that they may deliver to prospective home buyers.

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RURAL VILLAGES/CHARACTER AREAS IN THE COMPREHENSIVE PLAN

The Comprehensive Plan recognizes that preservation of this character is important to preserving the County's history. Furthermore, the Plan recognizes that no two rural villages are the same. The guiding plan and standards must be tailored to accommodate appropriate development patterns for the particular rural village or other area where it is being applied and reflect local community input.

Lancaster County has a number of traditional village centers that were once the center of significant commercial activity, including Alfonso, Bertrand, Foxwells, Lively, Litwalton, McNeals Corner, Millenbeck, Mollusk, Morratico, Nuttsville, Ottoman, Palmer, Regina, Weems, and Westland. Many of the historic crossroad communities remain relatively unchanged from their early days as points of trade or commercial development. Four of these villages - Lancaster, Lively, Morratico and Weems – have been identified as the most suitable locations for locating new residential, commercial and other development. The County has developed the Rural Village Overlay District which is intended to encourage a mix of activities and uses in the villages.

Encouraging lower-density appropriate growth around the four villages can offer several benefits. Firstly, a mix of activities in villages is one of the earliest development patterns in the County, and is entirely consistent with the goal of maintaining the County's traditional character. Secondly, most of Lancaster's commercial development, services and employment is located in the far eastern area of the County in and near the three towns of Irvington, Kilmarnock and White Stone. Encouraging some development in and adjacent to the four villages can provide residents in other parts of the County with more convenient access to services and reduce the need to drive. Thirdly, activity centers in the Rural villages can promote community gathering places by locating homes, stores and civic uses close to one another but at a rural scale.

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SUMMARY TABLE

| Tool | Definition | How it Works | Potential Benefits | Limitations |
|---|------------|--------------|--------------------|-------------|
| Conservation Development | | | | |
| Density Bonus | | | | |
| Development Approval Process | | | | |
| Exclusive Use Zoning / Agricultural Conservation Zoning Districts | | | | |
| Family Member Subdivision Transfer | | | | |
| Transfer of Development Rights | | | | |

Lancaster County: Land Use Tools

| Tool | Definition | How it Works | Potential Benefits | Limitations |
|--------------------------------------|------------|--------------|--------------------|-------------|
| Conservation Easements / Land Trusts | | | | |
| Sliding Scale Zoning | | | | |
| Large Minimum Lot Size | | | | |
| Buffering | | | | |
| Right-to-Farm Ordinance | | | | |